theory of a case, and, even though he may know facts which, in his opinion, would constitute a defense, he may confidently rely upon the defendant in the case — certainly when his interest dictates it — to perform his full duty, and is not required, under any recognized principle of law or equity, to anticipate him in so doing. He has a right to assume that the defendant will make all defenses available to him which he, in the exercise of his own judgment and discretion, deems wise and politic to make. We conclude from the foregoing that the fact that the plaintiff in the action at law failed to set forth facts which would have defeated her recovery, as hereinbefore detailed, affords no ground for a court of equity to vacate the judgment obtained by her in the action."

WILLS — WITNESSES SIGNING BEFORE TESTATOR, EFFECT. — There has been considerable difference of opinion among the courts as to whether a will is subscribed by witnesses, so as to satisfy the statute requiring wills to be attested and subscribed by witnesses, if the witnesses subscribe the paper before the testator has affixed his signature to it. On the one hand it is argued that there is no will to subscribe till the testator has signed it, and subscribing before the testator has signed is not subscribing the *will*. This view has been adopted in England, Georgia, Massachusetts, New York, and Wisconsin [*Byrd Goods of*, (1842), 3 Curteis Ecc; 117, 7 Eng. Ecc. 391; *Jackson* v. *Jackson* (1868), 39 N. Y. 153, 162; *Sisters of Charity* v. *Kelly*, (1876), 67 N. Y. 413; *Brooks* v. *Woodson* (1891), 87 Ga. 379, 13 S. E. 702, 14 L. R. A. 160; *Marshall* v. *Mason* (1900), 176 Mass. 216, 57 N. E. 340, 5 Pro. R. A. 613; and assumed in *Lewis's Will* (1881), 51 Wis. 101, 113, 7 N. W. 829]; and the Supreme Court of North Carolina has for a number of years been reckoned in the same list. But in *Cutler* v. *Cutler* (Feb. 1902), 130 N. Car. 1, 40 S. E. 689, that court held an exception on that ground not well taken, saying: "It seems singular that the witnesses should have signed before the testator, as there was nothing at that time for them to attest. It was certainly awkward and illogical for them to do so, and can only be sustained by its being all a part of one and the same transaction." This seems to be the more approved view. The witnesses are required to subscribe the paper in order that they may be able to identify it when presented for probate, — so that they can swear that it is the same paper which they saw the testator execute; and so that in case of their death or absence, their signatures will certify to the fact. In what possible way might the object of the statute be defeated by allowing a will which the witnesses subscribed before they saw the testator sign it? Most of the courts have held that wills so executed are valid. The reader will find the decisions adopting this view reviewed in the following: *Lacey* v. *Dobbs* (1900), 61 N. J. Eq. 575, 47 Atl. 481, 55 L. R. A. 580; *Gibson* v. *Nelson* (1899), 181 Ill. 122, 54 N. E. 901, 72 Am. St. Rep. 254, 5 Pro. R. A. 67; *Kaufman* v. *Coughman* (1897), 49 S. Car. 159, 27 S. E. 16, 61 Am. St. Rep. 808. The leading case on this side is *Swift* v. *Wiley* (1840), 1 B. Mon. (40 Ky.) 114.

IMPEACHMENT OF WITNESS—PRIVILEGED COMMUNICATION.—In the case of *Herman* v. *Schlesinger*, decided by the Supreme Court of Wisconsin, May 13, 1902, and reported in 90 N. W. Rep. 460, that court held, and quite cor-